

HR Weekly Podcast
January 21, 2015

Today is January 21, 2015, and welcome to the HR weekly podcast from the State Human Resources Division. Today's topic discusses disciplinary suspensions of exempt employees.

As a general rule, the imposition of unpaid disciplinary suspensions for exempt employees in full week increments maintains the exempt status from the overtime pay requirements of the Fair Labor Standards Act, or FLSA. Under the old regulations, an employer could not suspend an exempt employee without pay for disciplinary reasons in any increment other than a full work week without violating the salary basis test, except when the employee violated "safety rules of major significance". Exempt employees under the salary basis test are not subject to the FLSA's overtime provisions. In 2004, new United States Department of Labor, or USDOL, regulations on exemptions from overtime requirements took effect. Since 2004 employers may also make deductions from an exempt employee's salary for a disciplinary suspension of one or more full days without affecting the exempt status if it is imposed in good faith for infractions of "workplace conduct rules," provided the suspensions are imposed pursuant to a written policy applicable to all employees.

The USDOL construes "workplace conduct" narrowly to mean serious workplace misconduct such as sexual harassment, workplace violence, drug or alcohol policies, or violations of state or federal law. According to the USDOL, workplace conduct rules do not include attendance or performance issues.

Few courts have identified what will constitute serious workplace misconduct for purposes of the exception. Although its decision is not binding on South Carolina courts, a United States District Court in Alabama also found the following actions by firefighters constituted serious workplace misconduct and did not destroy the firefighters' exempt status: insubordination to a captain and responding to the wrong address. The Alabama court also explained that isolated or inadvertent improper deductions will not necessarily destroy an employee's exempt status. See Watkins v. City of Montgomery, 930 F.Supp.2d 1302 (M.D. Ala. 2013).

Agencies should discuss with their legal counsel how employees' exempt statuses may be affected, depending on the circumstances of the suspension. Thank you.